

CITY COUNCIL PROCEEDINGS

Tuesday, February 16, 2010

1. CALL TO ORDER AND ROLL CALL

Mayor Osborne called the regular February 16, 2010 council meeting to order at 6:00p.m.in the council chambers.

Those present were: Mayor Osborne, Deputy Mayor Wilson and Council Members Ageton, Appelbaum, Becker, Cowles, Gray, Karakehian and Morzel.

Mayor Osborne made a brief announcement that the Boards and Commissions recruitment deadline was Friday, February 19, 2010.

A. PRESENTATION OF A DECLARATION HONORING THE BOULDER SESQUICENTENNIAL COMMITTEE. – 6:05 P.M.

Mayor Osborne invited the Sesquicentennial committee members to stand on the dais and read a declaration honoring the committee for its work on various projects throughout Boulder's 150th Sesquicentennial birthday year.

2. PUBLIC PARTICIPATION and COUNCIL/STAFF RESPONSE – 6:12 p.m.

1. Seth Brigham spoke to censorship, the public nudity issue and election campaign violations before being removed for disrupting the meeting.
2. Eric Ross, member of Students for Peace and Justice, spoke regarding the Boulder Valley Comprehensive Plan with a request that Council extend the deadline for revisions until after March 10 to allow residents more time to submit proposals. He asked council to look at the BVCP guideline 1.05 on community engagement which he felt reflected his comments.
3. Rob Smoke spoke to the Boulder Reservoir recreational uses as well as health and safety issues that should be a council priority. He expressed disappointment with the delay in the process.
4. Morey Bean with the Urban Land Institute extended an invitation to Council Members to an event called "Growing Cooler" on Friday, March 12 from 7:30 – 10 a.m. Many speakers will participate in a panel discussion including author Jerry Walters.
5. Jan Morzel spoke to the recent annexation in his neighborhood on Upland between 19th and 22nd Streets. He noted that asphalt would be removed to install new sewer lines and he hoped Council would include traffic calming as part of those improvements and allow residents to plant more trees along the street. He indicated this would be proposed to the Transportation Advisory Board as well.
6. Amy Haywood agreed with Jan Morzel's comments and supported traffic calming in the neighborhood. She commented that the meeting with staff did not feel positive or productive toward the neighbors' request for the traffic calming. She also commented that some mature trees would be removed and she hoped council would help create a safe street.

City Manager Response:

- 1) Regarding traffic calming in the newly annexed Upland neighborhood, City Manager Brautigam indicated the City had a traffic calming policy and she would ask staff to provide Council with information about that policy and how it affects the Upland neighborhood.
- 2) Regarding Mr. Smoke's comments on the Boulder Reservoir Master Plan, Ms. Brautigam commented that he was correct and that staff had hoped the plan would be completed sooner. Staff would continue gathering input and working towards the completion of the plan unless something different was directed by Council.
- 3) Regarding the Boulder Valley Comprehensive Plan (BVCP) she noted the deadline had been publicized for several months to get comments in. Extending the deadline for comments could extend the project timeline and may affect the upcoming study session on April 27.

City Council Response:

Council Member Becker encouraged the community involvement on the BVCP and supported a deadline extension if there were no compelling reasons not to extend it.

Council Member Gray suggested sticking with the current deadline and perhaps taking additional comments regarding the proposals from the public.

Mayor Osborne commented that it made sense to keep the current deadline for property related changes and suggested the project manager could speak directly with Mr. Ross about his concerns.

City Manager Brautigam indicated staff would keep the current deadline for property related matters; ask project manager Susan Richstone to contact Mr. Ross for follow up and return to CAC with a recommendation.

Council Member Cowles requested information about the tree situation in the Upland neighborhood when staff returned with information about the traffic calming aspect.

3. CONSENT AGENDA: - 6:43 p.m.

- A. APPROVAL OF CITY COUNCIL MEETING MINUTES FROM JANUARY 19, 2010.**
- B. CONSIDERATION OF A MOTION TO ACCEPT THE DECEMBER 8, 2009 STUDY SESSION SUMMARY ON TRANSPORTATION FUNDING.**
- C. AN ITEM RELATED TO THE COLLECTION OF THE CITY'S CONSTRUCTION USE TAX: INTRODUCTION, FIRST READING AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY OF AN ORDINANCE AMENDING CHAPTER 3-2, "SALES AND USE TAX," B.R.C. 1981, BY ADDING AN ADDITIONAL APPEAL PROCEDURE FOR A CLASS OF CONSTRUCTION USE TAXPAYERS THAT WERE THE SUBJECT OF CONSTRUCTION USE TAX REVIEW BETWEEN JANUARY 1 AND JUNE 30, 2009, AND SETTING FORTH RELATED DETAILS.**

Council Member Ageton raised concern about a specific date contained in the rule. Acting City Attorney Gehr clarified that the date was intended to be removed and was there in error. Council Member Ageton then referenced the date of February 9 in Attachment B, the second paragraph, noting it should read February 16. This would be corrected for second reading.

Council Member Gray moved, seconded by Morzel to approve the consent agenda items 3A through 3C. The motion carried unanimously 9:0.

4. **CALL- UP CHECK IN: - 6:45 p.m.**
No interest was expressed.

ORDER OF BUSINESS

5. **PUBLIC HEARINGS: - 6:46 p.m.**

- A. CONSIDERATION OF A MOTION TO AUTHORIZE THE CITY MANAGER TO: 1) EXECUTE THE INTERGOVERNMENTAL AGREEMENTS TO ESTABLISH AND OPERATE AN ENVIRONMENTAL POOL TO MITIGATE AQUATIC RESOURCE IMPACTS FROM AN EXPANSION OF GROSS RESERVOIR; 2) FINALIZE AND SUBMIT COMMENTS ON DENVER WATER'S MOFFAT COLLECTION SYSTEM PROJECT DRAFT ENVIRONMENTAL IMPACT STATEMENT; AND, 3) NEGOTIATE AN AGREEMENT TO PRESERVE THE LEYDEN GULCH SITE.**

Bob Crifasi with the Open Space Department provided the presentation on this item. He noted the only update of merit on the EIS was that the Corps had extended the comment period for the draft EIS until March 17, 2010 to allow Grand County more time to comment.

He then spoke to two Intergovernmental Agreements (IGA) presented before Council. One was a three-way IGA staff had been working on between the City of Denver (Denver Water Board), the City of Boulder, and the City of Lafayette to develop an instream flow program for South Boulder Creek. The other IGA was between the City of Boulder and the City of Lafayette. The first agreement creates the 5,000 acre-foot environmental pool if Gross Reservoir were to be enlarged. The second agreement defines the operations of the environmental pool should the reservoir expansion take place.

Mr. Crifasi then provided a summary of flow goals for South Boulder Creek that would be established. He also summarized the environmental pool (and costs) and pointed out that one of staff's efforts has been to ensure that NO new west slope water is used to fill the environmental pool due to concerns about the upper Colorado and Frasier rivers.

An overview of what the City hoped to achieve with Leyden Gulch was provided as well. As one of the alternatives Denver Water is considering, the project would involve the construction of a 40,700 acre-foot Gross Reservoir expansion and 31,300 acre-foot reservoir at Leyden Gulch (two dams instead of one). Staff met with Denver water personnel and communicated a strong position against a Leyden Gulch alternative described Council concerns regarding transportation and hauling routes. Denver Water has agreed to continue discussions with staff on the Leyden Gulch matter.

Council Questions:

Council Member Appelbaum asked if it was explicitly called out that Jefferson County's purchase option would allow them to purchase the property for Open Space. He also commented that he didn't understand the bypass requirements on page 29, #10 of the

Boulder/Lafayette IGA. It was clarified that there were baseline flows from a previous IGA between Boulder and Lafayette that could not be altered.

Council Member Morzel agreed that clarification was needed about whether Jefferson County's purchase agreement specifies a purchase for open space only. She also asked about the mention that Jefferson County could purchase just a portion of the site and Denver would be allowed to sell the remaining land. Her concern was about keeping the land un-developed and she requested more details about the purchase agreement. It was clarified that the property was approximately 838 acres. Council Member Morzel asked why OSMP was paying the majority share of the project when some of the contribution should be coming from utilities. Bob Crifasi commented that the project primarily affected city open space. Ms. Morzel commented that staff should think about utilizing this project as an educational opportunity.

Deputy Mayor Wilson asked what happens to Boulder's ability to deliver drinking water to its residents during a severe drought. Mr. Crifasi commented that there is a drought reservation provision in the agreement.

Council Member Ageton asked about Boulder County involvement/impacts related to the agreement. Mr. Crifasi explained that Boulder County still has its 1041 permitting authority and may require additional mitigation. What Boulder is agreeing to would not bind Boulder County. City Manager Brautigam noted that her conversations with a County Commissioner had resulted in many of the same concerns the City had expressed.

Council Member Karakehian asked if there would be need for additional water storage facilities. Staff responded the city would have sufficient storage facilities.

The public hearing was opened:

1. Kathy Gritz read talking points from an environmental group of neighbors who live in the Gross Reservoir area. She urged the city council not to approve or sign the intergovernmental agreement with Denver Water Board and stated some of the impacts to the local environment and neighbors.
2. Jeff Thompson (handout) urged council not to make a decision without seeing a proper environmental impact statement. He encouraged council to contact him for a further discussion. The no action alternative is most practical and has the least impactful environmental outcome. Please consider the growth inducing affects, population density and air and water quality impacts.
3. Anita Wilks spoke in opposition to the project. She agreed with the previous speakers comments that the environmental impact statement does not address the potential impacts including a proposed toll road leading to massive urbanization. Air quality, noise, water quality are all areas of concern. Please protest the project no later than March 17.
4. John Revelle a Coal Creek Canyon resident noted they are sometimes left without a voice. Boulder has protected the Front Range far beyond what should be expected. The residents appreciate it. Please help residents mitigate the impact on the community. The public has been misled by public statements and he expressed no faith in Arvada related to protecting the backdrop.

5. Larry Quilling pooling time with Bart Miller, Western Resource Advocates and Erica Stok, representing Boulder Flycasters, spoke to the EIS and suggested an improvement in language could be made to protect the water supply. He neither supported or opposed the Moffat expansion, but fully supported mitigation and noted the EIS was insufficient in supporting the needs of Grand County.
6. Jack Coddington – has lived near gross reservoir for the past 30 years. Crushing rock and making cement 24/7. Quality of life is a serious concern. How much longer can the western slope withstand water withdrawal for the front range. Would prefer council protest the project and felt it was a huge environmental disaster.
7. Jody Dickson, Boulder County resident and city property owner, felt supporting the project meant supporting development. Conservation is the answer. She was concerned about the impact on the Frasier and Colorado Rivers. The environmental cost of the project is too great.
8. Keith Young raised concern that the dam is built on a fault area and thought this should be researched further.

There being no further speakers the public hearing was closed at 7:55 p.m.

Bob Crifasi summarized that the IGA only addresses aquatic mitigation and in no way indicates support of enlarging the reservoir. The City has taken a neutral stance on the overall project. If Denver's plan is approved the agreement addresses aquatic mitigation issues on South Boulder Creek. Boulder would not be gaining any municipal yield from the project. There is strong language in the comment letter from Boulder asking the Corps to issue permit conditions to prohibit construction traffic allowed on Flagstaff, Boulder Canyon or West Magnolia roads. This IGA does replace the 1998 IGA between Boulder and Denver Water. Boulder staff would continue to pursue the least environmentally damaging option.

Council Member Cowles moved, seconded by Appelbaum to authorize the city manager to 1) execute the Intergovernmental Agreements to establish and operate an environmental pool to mitigate aquatic resource impacts from an expansion of Gross Reservoir in substantially the form attached hereto as Attachments A and B of the memo; 2) finalize and submit comments (Attachment C of the memo) on Denver Water's Moffat Collection System Project draft Environmental Impact Statement; and, 3) negotiate an agreement to preserve the Leyden Gulch site and including all changes in the buff and blue colored handouts provided by staff.

Council Member Appelbaum offered a friendly amendment to direct staff to strengthen the comments 5, 6 and 7 on page 39 of the memo. The friendly amendment was accepted.

Vote was taken on the main motion to authorize the city manager to 1) execute the Intergovernmental Agreements to establish and operate an environmental pool to mitigate aquatic resource impacts from an expansion of Gross Reservoir in substantially the form attached hereto as Attachments A and B of the memo; 2) finalize and submit comments (Attachment C of the memo) on Denver Water's Moffat Collection System Project draft Environmental Impact Statement; and, 3) negotiate an agreement to preserve the Leyden Gulch site, and including all changes in the buff and blue colored handouts provided by staff and the friendly amendment to direct staff to strengthen comments 5, 6 and 7 on page 39 of the memo. The motion carried unanimously, 9:0 – 8:37 p.m.

6. **MATTERS FROM THE CITY MANAGER:** None.

7. **MATTERS FROM THE CITY ATTORNEY:** None.

8. **MATTERS FROM MAYOR AND MEMBERS OF COUNCIL:** - 8:30 p.m.

A. POTENTIAL CALL-UPS:

1. **VACATION OF A PORTION OF AN EXISTING UTILITY EASEMENT TO ACCOMMODATE NEW SITE IMPROVEMENTS FOR TWO NEW POOLS AND A POOL HOUSE AT THE COLORADO ATHLETIC CLUB AT 1821 TWENTY NINTH STREET SHOPPING CENTER. (ADR2009-00176). WIP DATE: FEBRUARY 4, 2010. LAST OPPORTUNITY FOR CALL-UP IS FEBRUARY 16, 2010. STAFF APPROVAL.**

No action was taken on this item.

2. **MINOR SITE REVIEW AMENDMENT #LUR2009-00072 FOR THE DAIRY CENTER FOR PERFORMING ARTS, LOCATED AT 2590 WALNUT STREET IN THE BUSINESS REGIONAL – 1, BR-1 ZONING DISTRICT. THE APPLICATION INCLUDES A FRONT FAÇADE REMODEL, AN ADDITION, AND AN INTERIOR REMODEL TO ACCOMMODATE A NEW ART HOUSE CINEMA. THE APPLICATION ALSO INCLUDES BUILDING IMPROVEMENTS FOR LIFE SAFETY AND ENERGY EFFICIENCY. WIP DATE: FEBRUARY 11, 2010. LAST OPPORTUNITY FOR CALL-UP IS MARCH 2, 2010. APPROVED BY THE PLANNING BOARD 5-0, SOPHER ABSENT.**

No action was taken on this item.

3. **SITE REVIEW #LUR2009-00048 FOR A PEDESTRIAN BRIDGE THAT WILL SPAN US HIGHWAY 36 AT TABLE MESA DRIVE. THE PROPOSED STAIR/ELEVATOR TOWERS OF THE BRIDGE WILL EXCEED THE MAXIMUM PERMITTED HEIGHT OF THE RESIDENTIAL HIGH FIVE (RH-E) ZONE DISTRICT (35 FEET) FOR A TOTAL HEIGHT OF 55 FEET. WIP DATE: FEBRUARY 11, 2010. LAST OPPORTUNITY FOR CALL-UP IS MARCH 2, 2010. APPROVED BY THE PLANNING BOARD 5-0, SOPHER ABSENT.**

No action was taken on this item.


9. **PUBLIC COMMENT ON MATTERS:** - None

10. **FINAL DECISIONS ON MATTERS:** - None


11. **ADJOURNMENT**

There being no further business to come before Council at this time, BY MOTION
REGULARLY ADOPTED, THE MEETING WAS ADJOURNED AT 8:35 P.M.

APPROVED BY:


Susan Osborne,
Mayor

ATTEST:


Alisa D. Lewis,
City Clerk